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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,841	02/13/2002	Leonard Raymond Colavito	Colavito1-3-1-1	6348
46900	7590	12/13/2005	EXAMINER	
MENDELSON & ASSOCIATES, P.C. 1500 JOHN F. KENNEDY BLVD., SUITE 405 PHILADELPHIA, PA 19102			DUONG, DUC T	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/074,841	Applicant(s) COLAVITO ET AL	
	Examiner Duc T. Duong	Art Unit 2663	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,12-15,18 and 26 is/are rejected.
- 7) ☒ Claim(s) 2,3,5-11,16,17 and 19-25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/13/02</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 4, 12-15, 18, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al (US Patent 6,862,298 B1).

Regarding to claims 1 and 15, Smith discloses a buffer 56 for processing data packets transmitted over a network 52 (fig. 3 col. 3 lines 42-46), comprising a memory 56 configured to store each received data packet (fig. 1 col. 3 lines 46-48); and a controller 54 (fig. 1 col. 3 lines 57-64) configured to dynamically update a first threshold value (buffer size) based on variation in packet transit time over the network and data packets arriving out-of-sequence (col. 4 lines 1-4), perform a comparison based on a waiting time of a data packet and the first threshold value (fig. 4 col. 6 lines 17-31; noted

the comparison is performed based on the APV (packet waiting time) and the buffer size); and transmit the data packet from the buffer for further processing based on the comparison (fig. 4 col. 6 lines 32-47; noted the data packet is transmitted to the speed control 62 based on the comparison, which in turn transmits to the decoder 64).

Regarding to claims 4 and 18, Smith discloses the buffer 56 is configured to generate an estimated current packet waiting time, a variation measure, and an out-of-sequence error and to update the first threshold value (buffer size) based on the estimated current packet waiting time, the variation measure, and the out-of-sequence error (col. 4 lines 1-4; noted the delay variation is a measure of both the packet waiting time and the variation measure).

Regarding to claims 12 and 13, Smith discloses the data packet is voice over IP packet (col. 1 lines 14-17).

Regarding to claims 14 and 26, Smith discloses the buffer is implemented with an integrated circuit (col. 3 lines 57-60).

### ***Allowable Subject Matter***

3. Claims 2, 3, 5-11, 16, 17, 19-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 571-272-3122. The examiner can normally be reached on M-F (9:00 AM-5:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DD

DD

  
RICKY Q. NGO  
SUPERVISORY PATENT EXAMINER